IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. Civil Revision No. 2118 of 2007
Date of Decision: May 17, 2007

Kawaljit Kaur and another ..... Petitioners

versus

Gautam Cheema and others ..... Respondents

2. COCP No. 8 of 2007
Date of Decision: May 17, 2007

Kawaljit Kaur and another ..... Petitioners

versus

Gautam Cheema and others ..... Respondents

Present:- Shri Hemant Saini, Advocate, for the petitioners

HEMANT GUPTA, J.

The petitioners have filed petition under sections 11 and 12 of the Contempt of Courts Act, 1971 (hereinafter to be referred as "the Act"), for initiating contempt proceedings against the respondents i.e., Senior Superintendent of Police, Station House Officer, Police Station Majitha and others on the ground that the directions of the civil Court dated 27.04.2006 to the Station House Officer, Police Station Majitha, to provide police assistance to the petitioners to enforce the orders passed by the Court on 21.11.2005 has not been willfully and intentionally implemented.

It is the case of the petitioners that an injunction was granted by the civil Court in respect of agricultural land measuring 61 Kanals 11

Marlas vide order dated 21.11.2005. It is alleged that in spite of the order of injunction passed by the civil Court, the accused did not allow the petitioners to enter into their own fields and would cause obstructions by their illegal acts. The petitioners thereafter filed an application before the Court for directing the police to give police help. The learned trial Court ordered grant of police help by Station House Officer, Police Station Majitha. The private respondents harvested the wheat crop on 22.04.2006 as the police officials did not comply with the directions issued by the Court. Therefore, the police officials as well as private respondents are liable to be proceeded against under the provisions of the Act.

When the petition came up for hearing before this Court on 5.4.2007, the office was directed to register a separate petition under Article 227 of the Constitution of India in respect of an order passed by the learned trial Court on 27.04.2006 as I was, prima facie, of the opinion that the civil Court will not have the jurisdiction to pass an order providing police help for violation of an order passed under Rule 39 Rules 1 and 2 of the Code of Civil Procedure, 1908 (hereinafter to be referred as "the Code"). In pursuance of the said order Civil Revision No. 2118 of 2007 was registered in which the plaintiff-petitioners had filed reply dated 24.04.2007.

The plaintiffs have relied upon a number of judgments including the judgments of this Court reported as **Ram Singh vs. Jaggar Singh, 2001(3) Civil Court Cases 397 (P&H); Gram Panchayat, Daroli Jat vs. Smt. Lokesh Devi and others, 1999 (Suppl.) Civil Court Cases 371 (P&H), Prithvi Raj vs. Shamsher Singh, 2002(3) Civil Court Cases 82 (P&H) and Thakur Dass vs. Harijan Sudhar Samiti, 1995(1) Civil Court Cases 410 (P&H)**. Reliance was also placed upon an order

passed by this Court 03-04-2007 in Criminal Misc. No. 20963-M of 2007 whereby a petition for direction to respondents No.1 and 2 to provide protection to the petitioners was disposed of with liberty to the plaintiffs to make an appropriate application before the learned trial Court.

I have heard learned counsel for the petitioners at some length and also examined the record of the learned trial Court summoned vide order dated 07.05.2007. The plaintiffs have sought injunction in respect of land measuring 61 Kanals 11 Marlas alleging ownership and possession of the aforesaid land pointing out that peas crop (Mattar crop) has been sown in the land in dispute and that the defendants have no right, title or interest in the disputed land. Such suit was filed on 14.11.2002 along with an application for grant of ad interim injunction. Written statement in the aforesaid suit was filed on 3.6.2005 but application for grant of ad interim injunction was decided only on 21.11.2005 and that no ad interim order was granted.

The defendants' appeal was partly accepted as it was found that Khasra Nos. 181/26 (1 Kanal 10 Marlas) and 182/5 (7 Kanals 11 Marlas) is not reflected to be in possession of the plaintiffs even as per order passed by the Naib Tehsildar which pertains to correction of Khasra Girdawari of land measuring 53 Kanals 9 Marlas. Still further, an application under Order 1 Rule 10 of the Code has been allowed by the learned trial Court on 26.02.2007 whereby defendants No.4 to 7 have been impleaded. The said additional parties were impleaded on the basis of averments that they are owners in possession of the land measuring 8 Kanals comprised in Khasra No. 176/19 on the basis of registered sale deed 27.05.1990 and 22.05.1996 as aforesaid Khasra No. was sold to them.

A perusal of the record further shows that soon after the injunction was granted on 21.11.2005, the plaintiffs have moved an application for providing police help for sowing and harvesting the crop. Such application dated 26.11.2005 was filed on 3.12.2005. The subsequent applications are dated 5.12.2005, 8.4.2006, 12.04.2006, 18.05.2006, 7.6.2006, 15.6.2006 and 29.9.2006. The prayer in all these applications is for directing the police authorities to provide police help either for sowing of the crop or for harvesting the same. The learned trial Court has allowed the application for providing police help on 27.04.2006.

The judgments referred to by learned counsel for the petitioners are primarily to the effect that the Courts have inherent jurisdiction to pass an appropriate order to ensure enforcement of its order and the fact that there is a provision under Order 39 Rule 2-A of the Code does not prevent the Court from taking steps for see that its orders are implemented. The principles laid down in the judgments referred to by the learned counsel for the petitioners cannot be disputed but the fact remains whether in the facts and circumstances of the case, the petitioners are entitled to police protection needs to be examined.

Though the suit was filed in November, 2002 but no ad interim injunction was granted. Therefore, to presume that the respondents would interfere in the possession of the plaintiffs soon after injunction order was passed in favour of the plaintiffs is open to doubt. It appears that the plaintiffs under the garb of ad interim injunction passed by the civil Court wants to take possession of the suit land. One cannot explain the promptitude with which the application for police help dated 26.11.2005 was filed to seek compliance of the order passed by the learned trial Court

on 21.11.2005. Though the civil Court has passed an order holding the plaintiffs to be in possession of certain Khasra Nos but, as per facts on the record, the crop is being harvested by the defendants since November, 2005 which is apparent from the fact that applications are being filed by the plaintiffs for permission to sow the crop under police protection and again harvest the same under police protection. As per plaintiffs, police protection has not been provided. As per case set up by the plaintiffs, they are, admittedly, out of possession. Whether such dispossession is after the orders were passed by the civil Court is a question of fact which is required to be adjudicated upon by the learned trial Court on the basis of evidence which is be led by the parties. It is more so when a similar application filed by the plaintiffs has been withdrawn in proceedings under section 482 of the Code of Criminal Procedure, 1973, with liberty to move an appropriate application before the learned trial Court.

Therefore, I am of the opinion that the order passed by the learned trial Court providing police help to the plaintiffs at this stage is premature as in the facts and circumstances of the case the question of possession is required to be examined by the civil Court on the basis of evidence led by the parties. Prima facie, the conduct of proceedings weighs heavily against the plaintiffs to infer that actual physical possession is not with the plaintiffs and, therefore, under the garb of police protection, the plaintiffs want to gain entry into the suit land only because ad interim order has been passed by the learned trial Court. Providing of police help to implement ad interim order may lead to serious consequences. Once the order has been passed, it is the duty of the police authorities that the parties implement the said order so as to maintain law and order. But the interim

order passed on the basis of, prima facie, appreciation of documents cannot be conclusive to hold that the plaintiffs must be provided police help even if it amounts to change of actual physical possession.

Therefore, in the facts and circumstances of the case, I am of the opinion that the order passed by the learned trial Court on 27.04.2006 suffers from patent illegality and material irregularity and the same cannot be sustained in law.

Consequently, revision petition is allowed and order dated 27.04.2006 is set aside.

Since the order providing police help has been set aside, the contempt petition alleging non implementation of the said order does not survive and the same is dismissed.

May 17, 2007 (HEMANT GUPTA)
ks JUDGE